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Total Number of Pages in This Submission

17

Application Number

09/841,402

Filing Date

April 23, 2001

First Named Inventor

ROBERT D. KLUSER

Art Unit

3637

Examiner Name

Janet M. Wilkens

Attorney Docket Number

7201 US

**ENCLOSURES (Check all that apply)**

Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Reply to Missing Parts/  
Incomplete Application

Reply to Missing Parts

under 37 CFR 1.52 or 1.53



Drawing(s)



Licensing-related Papers



Petition

Petition to Convert to a  
Provisional Application

Power of Attorney, Revocation



Change of Correspondence Address



Terminal Disclaimer



Request for Refund



CD, Number of CD(s) \_\_\_\_\_

☐ Landscape Table on CD

After Allowance Communication to TC

Appeal Communication to Board  
of Appeals and InterferencesAppeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please identify  
below):Response to Notification of Non-Compliance  
Appendix  
Return Post Card

Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name

TEKTRONIX, INC.

Signature

Printed name

FRANCIS I. GRAY

Date

FEBRUARY 1, 2005

Reg. No.

27,788

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Typed or printed name

Pauline L. Bradley

Date

FEBRUARY 1, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (12-04v2)

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Effective on 12/08/2004.  
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**  
**For FY 2005****Complete if Known**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 500.00

Application Number	09/841,402
Filing Date	April 23, 2001
First Named Inventor	ROBERT D. KLUSER
Examiner Name	Janet M. Wilkens
Art Unit	3637
Attorney Docket No.	7201 US

**METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 20-0352 Deposit Account Name: TEKTRONIX, INC.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
_____ - 20 or HP = _____	x _____	= _____	

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
_____ - 3 or HP = _____	x _____	= _____	

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): APPEAL BRIEF**Fees Paid (\$)**

\$500.00

**SUBMITTED BY**

Signature	<u>Francis I. Gray</u>	Registration No. (Attorney/Agent) 27,788	Telephone (503) 627-7261
Name (Print/Type)	FRANCIS I. GRAY		Date FEBRUARY 1, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: **ROBERT D. KLUSER and WARREN L. POWERS**

Filed: **April 23, 2001**

Examiner: **Janet M. Wilkens**

Serial No.: **09/841,402**

Art Unit: **3637**

For: **MODULAR RACK MOUNTING SYSTEM**

February 1, 2005

Mail Stop Appeal Brief - Patents  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF**

Dear Sir:

This is an appeal from the rejection of the Examiner dated July 12, 2004  
finally rejecting claims 1-5 and 4/8.

**Real Party in Interest**

Appellants' assignee, Tektronix, Inc., an Oregon corporation, is the real party  
in interest for this case.

**Related Appeals and Interferences**

There are no other appeals or interferences known to Appellants, Appellants'

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legal representatives or Appellants' assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **Status of Claims**

Claims 1-5, 7 and 8 are pending in the present appeal, with claim 6 having been canceled and replaced by claim 8. Claims 7, 5/8 and 7/8 are objected to as depending from a rejected base claim. The appealed claims are claims 1-5 and 4/8.

### **Status of Amendments**

The amendment of August 23, 2004, filed by Appellants subsequent to the final rejection by the Examiner, has been entered by the Examiner.

### **Summary of the Claimed Subject Matter**

The present invention relates to a modular rack mounting system that is flexible for mounting instruments having different environmental requirements in an instrument rack. Prior rack mounting systems have had a "one size fits all" characteristic that are sized to fit either into a full rack or into a half rack by providing sleeves for the full rack that are half-rack size and are welded together. The sleeves are all standard and have ventilation holes that do not necessarily conform to all instrument environmental requirements. (Fig. 1; page 1, lines 5-23) This results in the requirement of an innumerable number of rack mounting systems to

accommodate all environmental requirements. (Page 1, line 24 - page 2, line 1)

As shown in Fig. 2 the present invention has a central frame 12 suitable for mounting on an instrument rack that is formed from two portions 18, 20 that are welded together to form a central compartment. A central rib 22 may be used to divide the central compartment into two compartments. One or more detachable sleeves 14, 16 within which an instrument may be mounted are configured to fit within the central compartment or into either of the two compartments defined by the rib. The sleeves are detachably secured to the frame, such as by holes 26 in the sleeves that engage snap and latch systems 28 mounted on the inside of the frame and/or the central rib. The sleeves slide into the respective compartments and the snap and latch systems include a button 30 that engages the hole in the sleeve to secure the sleeve in the frame. The button may be depressed from the interior of the sleeve to detach the sleeve from the frame. (Page 3, line 15 - page 4, line 10) The button may be mounted on a spring 48 to allow for such detachable snap and latch action. (Page 4, lines 18-22) The open nature of the frame together with the sleeves being adapted to conform to the particular environmental requirements of the instruments to be placed within them results in the desired flexible modular rack-mounting system.

**Grounds of Rejection to be Reviewed on Appeal**

(1) Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,138,525 (Rodriquez)

(2) Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,138,525 (Rodriguez).

(3) Claims 2, 5 and 4/8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,138,525 (Rodriguez) in view of U.S. Patent No. 4,688,131 (Noda) and U.S. Patent No. 5,587,877 (Ryan).

### **Argument**

#### **1. Rejection of claim 1 under 35 U.S.C. 102(b)**

35 U.S.C. 102(b) in pertinent part provides that “[A] person shall be entitled to a patent unless . . . the invention was patented . . . in this or a foreign country . . . more than one year prior to the date of the application for patent in the United States.” This has been interpreted to mean that all the elements of a claim, in order to be anticipated under this Section, must be contained within the four corners of a single prior art patent. (*Walker v. General Motors Corporation*, 362 R.2d 56, 58, 149 USPQ 472, 473-474 (9<sup>th</sup> Cir. 1966))

Rodriguez discloses a digital computer chassis or computer unit **20**, rather than a modular rack-mounting system as recited by Appellants, which uses a strut **15** (not a rib) between front and rear walls **17**, **18** to provide structural rigidity and a conductor conduit **16**. The strut also provides a point of attachment and support for a power supply **22** and a hard disk drive **21**. (Column 2, lines 8-11) The computer chassis is not designed for mounting on an instrument rack, but rather is designed to

be a self-contained unit. Also the structure of front and rear walls on a chassis (bottom) with a strut between them do not form a compartment – one of the parts into which an enclosed space is divided -- without also including a cover 26 to provide a top and side walls. Note that with the cover a sleeve **a** has no control over the environmental requirements of anything (disk drives 25) inserted therein, i.e., there is no environmental flexibility. The sleeve shown may be secured to the bottom of the chassis by what appears to be a tongue **c** in the bottom of the chassis that interacts with a hole **b** in the sleeve prior to putting the cover on. Such an arrangement does not appear to be readily detachable, but rather appears to be permanent.

Claim 1 recites a frame suitable for mounting on an instrument rack, which frame has a central compartment with a top, bottom and two sides. The Examiner equates this configuration to the entire inside of the computer unit. The computer unit has not only top, bottom and two sides, but also front and rear ends. Appellants submit that Rodriguez at best provides a structure having the front wall, rear wall and bottom with the strut, that incidentally divides the structure into two open regions, for rigidity. No compartment, i.e., enclosed space, is formed until the cover is put in place to complete the computer unit, at which time it is not possible to insert the sleeve into the “compartment.” In Rodriguez the sleeve has to be mounted to the bottom of the chassis prior to the cover being put on, i.e., before any “compartment” exists. Therefore Rodriguez does not teach or suggest the “frame” as recited by Appellants.

Claim 1 further recites a sleeve within which an instrument may be mounted, which sleeve is configured to be inserted and fit within the central compartment.

The sleeve of Rodriguez does reside within the “compartment” formed by the cover between the front wall and the power supply, but it is not insertable into the compartment as described above because it cannot be mounted once the cover is on to form the compartment.

Finally claim 1 recites means for detachably securing the sleeve within the compartment. Appellants submit, as discussed above, that the sleeve is not “detachably” secured, rather that the sleeve is permanently secured. Therefore claim 1 is deemed not to be anticipated by Rodriguez because Rodriguez does not disclose all the elements together in the same way to perform the identical function as recited in claim 1.

## 2. Rejection of claim 4 under 35 U.S.C. 103(a)

35 U.S.C. 103(a) recites in pertinent part that “[A] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which such subject matter pertains.” Under this Section “the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” (*Graham v. John Deere Co. of Kansas City*, 383 US 1, 148 USPQ 459, 467 (1966)) In order for it to be obvious to combine references to produce the claimed invention, there must be some teaching or suggestion in the references that would lead one of ordinary skill in the art to make such a combination. (*Ex parte Shepard et al*, 188 USPQ 536 (1974))



With respect to claim 4 a rib is recited, not a strut as in Rodriguez. The recited rib, as shown in Fig. 2, is comparable to a rib defined as “a light fore-and-aft member in an airplane wing.” The purpose of the rib in Appellants’ claim is to separate a single compartment “into two equal compartments.” The purpose of the strut of Rodriguez is merely to provide structural rigidity. Therefore, since the strut of Rodriguez serves a different function and is not in fact a rib, it is not equivalent to the rib recited by Appellants. Thus claim 4 is deemed to be patentable as being nonobvious over Rodriguez.

### 3. Rejection of claims 2, 5 and 4/8 under 35 U.S.C. 103(a)

With respect to claims 2, 5 and 4/8 the Examiner states that Rodriguez fails to teach that the securing means is specifically a spring and button member, but that Noda teaches a securing means having a spring **88** mounted on a frame **24** and a button **94** mounted on the spring and extending through holes in the frame and sleeve **22**. Further the Examiner states that, assuming that the base of the frame in Rodriguez is flush with a support surface, a “fake bottom” **16** as taught by Ryan could be employed to allow the spring to flex; and when the components are removed from the sleeve, the buttons may be depressed from within the sleeve.

The first question to be answered is whether the teachings of Noda suggest to one of ordinary skill in the art the replacement of the tongue and hole securement means of Rodriguez with the spring and pawl mechanism of Noda. Is such a combination reasonably possible, and would it produce Appellants’ claimed invention? Noda discloses a locking means that permits ready detachment of a

magnetic disk assembly **22** from a disk drive compartment **32** within a housing **24**. The disk drive assembly has its own enclosure **34** with an entrance slot **40** for insertion of a disk cartridge **42**. The locking mechanism includes a cantilever spring **88** having a locking lever **86** at the free end with a pawl **94** that extends through first holes **96** in the compartment wall to engage corresponding holes **46** in the disk assembly. To detach the disk assembly a separate retraction mechanism **106** is inserted into the entrance slot. The retraction mechanism has tripping levers **114** with tips **104** that may be extended through second holes **98** in the compartment wall to push the lock lever to lift the pawls out of the first holes so the disk assembly may be withdrawn. The pawl is not what is depressed, but rather the locking lever.

To combine Noda with Rodriguez would be to replace the tongue and hole arrangement of Rodriguez with the locking means of Noda, i.e., the locking means of Noda would be incorporated into the bottom of Rodriguez in lieu of the tongue and hole arrangement. Noda teaches the locking mechanism as being in the opposing side walls of the compartment (which do not exist in Rodriguez even with the cover on, as the "side" away from the cover is open), and not in the bottom or only one wall.

(i) Claims 2 and 4/8 recite a spring mounted on a frame with a button that extends through a hole in the frame to engage a corresponding hole in the sleeve. These claims further recite that the button is accessible so that the button – not the lever arm upon which the button is mounted as in Noda – may be depressed from the interior of the sleeve to readily remove it from the frame. Therefore Noda does not teach or suggest that the pawl is depressed to remove the sleeve, but rather the

intermediary element between the spring and the pawl is depressed via a secondary hole in the frame. Thus claims 2 and 4/8 are deemed to be allowable as reciting a configuration that is not taught or suggested by Noda.

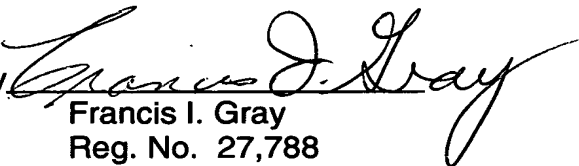
(ii) Claim 5 recites that an inner spring is mounted on the central rib. The strut of Rodriguez is not a "rib" that divides a compartment into two compartments as its purpose is for structural rigidity, not compartment division, as discussed above. Further there is no way that a securing mechanism could be mounted on such strut – certainly not the locking mechanism of Noda. Therefore the combination of Noda with Rodriguez does not produce the invention as recited in claim 5, and Appellants submit that claim 5 is patentable over Rodriguez in view of Noda and Ryan.

### **Conclusion**

In view of the foregoing arguments Appellants submit that claims 1-5 and 4/8 are allowable over the cited references. Therefore Appellants request that the Examiner's rejection be reversed, and that this case be passed to issue.

Respectfully submitted,

ROBERT D. KLUSER et al

By   
Francis I. Gray  
Reg. No. 27,788  
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-1-

APPENDIX

**Evidence Relied Upon by Appellant**

None.

**Related Proceedings**

None.

**Appealed Claims**

1. A modular rack-mounting system comprising:

a frame suitable for mounting on an instrument rack, the frame forming a central compartment having a top, a bottom and two sides;

a sleeve within which an instrument may be mounted, the sleeve being configured to be inserted and fit within the central compartment; and

means for detachably securing the sleeve within the central compartment.

2. The modular rack-mounting system as recited in claim 1 wherein the securing means comprises:

a spring mounted on the frame;

a button mounted on the spring and extending through a hole in the frame into the central compartment to engage a corresponding hole in the sleeve when the sleeve is inserted within the central compartment, the button being accessible from the interior of the sleeve so that, when the button is depressed from the interior of the sleeve, the sleeve may be readily removed from the central compartment.

3. The modular rack-mounting system as recited in claim 1 wherein the frame comprises:

a left portion having fingers; and

a right portion having fingers, the fingers of the left and right portions interlocking with each other to assure rigidity of the frame.

4. The modular rack-mounting system as recited in claim 1 further comprising a central rib mounted within the frame to form a central wall that divides the central compartment into two equal compartments, the sleeve being configured to fit within either compartment.

5. The modular rack-mounting system as recited in claim 4 wherein the securing

means comprises:

- an inner spring mounted on the central rib;

- a button mounted on the inner spring to engage a hole in the sleeve when the sleeve is inserted into one of the two compartments, the button being accessible from the interior of the sleeve so that, when the button is depressed from the interior of the sleeve, the sleeve may be readily removed from the one compartment.

8. The modular rack-mounting system as recited in claims 4, 5 or 7 wherein the securing means comprises:

- an outer spring mounted on the frame;

- a button mounted on the outer spring and extending through a hole in the frame into one of the two compartments to engage a corresponding hole in the sleeve when the sleeve is inserted within the one compartment.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: **ROBERT D. KLUSER and WARREN L. POWERS**

Filed: **April 23, 2001**

Examiner: **Janet M. Wilkens**

Serial No.: **09/841,402**

Art Unit: **3637**

For: **MODULAR RACK MOUNTING SYSTEM**

February 1, 2005

Mail Stop Appeal Brief - Patents  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO NOTIFICATION OF NON-COMPLIANCE**

Dear Sir:

In response to the Notification of Non-Compliance with 37 CFR 1.192(c)/41.37(c) dated January 14, 2005 for the above-identified application, attached is a new copy of the previously submitted Appeal Brief that is deemed now to comply with new Section 47.37(c).

The "summary of the invention" has been changed to "summary of claimed subject matter"; the "issues" and "grouping of claims" have been replaced by "grounds of rejection to be reviewed on appeal" (claim 3 is not included in this section as it stands or falls with claim 1 and no separate argument for patentability is made with respect to this claim); a separate heading is provided for each ground of rejection, with the claims argued separately placed under sub-paragraphs; claim 7 has been deleted from the "appealed claims"; and the Appendix includes on

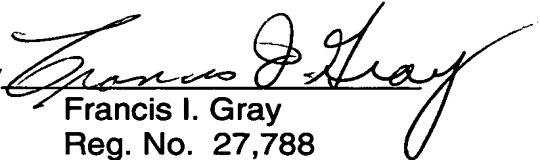


separate pages "evidence" and "related proceedings" sections, of which there are none in this appeal.

Please reconsider the present application in light of the reformatted Appeal Brief.

Respectfully submitted,

ROBERT D. KLUSER et al

By   
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